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SUPREME COURT, U. S.

No. 73-193

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In the Supreme Court of the United States

OCTOBER TERM, 1973

JOSEPH JEFFERSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that there was no probable cause to stop his moving vehicle.

After a non-jury trial in the United States District Court for the Eastern District of Virginia, petitioner, a previously convicted felon, was convicted of possessing a firearm which had travelled in interstate commerce, in violation of 18 U.S.C. App. 1202(a). He was sentenced to two years' imprisonment. The court of appeals affirmed (Pet. App.).

At approximately 11:30 p.m. on August 14, 1972, Officer Aubrey S. Powell of the Henrico County Police Department was told by a person, previously found to be a reliable informant, that petitioner was carrying a concealed weapon (Tr. 5, 13-14, 18).[1] Since Powell's

[1] "Tr." designates the transcript of the trial, a copy of which is being lodged with the Clerk of this Court.

authority did not extend to the city of Richmond, where petitioner had been seen, Powell conveyed this information to Detective J. D. Millikin of the Richmond, Virginia Police Bureau (Tr. 5, 7-8, 10-11). At 3:00 a.m. on August 15, 1972, Millikin and Powell, upon observing petitioner operating an automobile, stopped petitioner (Tr. 6). Millikin testified that, as he approached the stopped vehicle, he observed petitioner remove a pistol from his waistline and lay it on the ashtray of the vehicle (Tr. 6, 9). Petitioner was thereupon placed under arrest for the state offense of carrying a concealed weapon (Tr. 3, 7).[2]

It was stipulated that the weapon in question had been shipped in interstate commerce on or about January 6, 1972, and that petitioner had been previously convicted of a felony (Tr. 44-46).

Petitioner contends that there was insufficient probable cause to make an investigatory stop of his car and that any evidence seized as a result of such a stop should be suppressed. This contention was properly rejected by the court of appeals, on whose opinion we rely.[3]

Petitioner raises one argument not considered by the court below—that reliable hearsay communicated to one police officer may not form the basis of a stop by another officer. This contention has been rejected. See *United States* v. *Melancon*, 462 F. 2d 82, 91 (C.A. 5), certiorari denied, 409 U.S. 1038; *United States* v. *Plemmons*, 336 F. 2d 731, 734 (C.A. 6).

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[2] Since petitioner was prosecuted on the federal charge, the state charge was dismissed.

[3] We additionally note that at the trial petitioner's counsel specifically stated that he did not question the reliability of the informant. (Tr. 14, 16).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.